

## **REMARKS**

In response to the above-identified Office Action, Applicants amend the Application and seek reconsideration in view of the following remarks. In this Response, Applicants do not amend, cancel, or add any new claims. Accordingly, claims 10-18, 22, 24, 26, 28, and 30-36 remain pending in the Application.

### **I. Claims Rejected Under 35 U.S.C. § 103**

#### **A. Claims 10-18, 22, 24, 26, 28, and 30-33**

Claims 10-18, 22, 24, 26, 28, and 30-33 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent Application Publication No. 2004/0054866 filed by Blumenau et al. ("*Blumenau*") in view of U.S. Patent No. 6,209,059 issued to Ofer et al. ("*Ofer*") and U.S. Patent No. 6,311,257 issued to Fitzgerald et al. ("*Fitzgerald*"). Applicants respectfully traverse the rejection.

To render a claim obvious, the cited references must teach or suggest each and every element of the rejected claim (*see* MPEP § 2143). Among other elements, claim 10 defines a method for processing data comprising the elements of: "so that an order of arrival of the conveyed converted commands at the specific LU complies with the order of arrival of the received command at the given port" and "wherein concurrent commands from different ports arrive at the specific LU in an arbitrary order of arrival" (emphasis added). Applicants submit that the combination of *Blumenau*, *Ofer*, and *Fitzgerald* fails to teach or suggest at least these elements of claim 10.

In making the rejection, the Patent Office alleges that it can be inferred from *Blumenau*, *Ofer*, and *Fitzgerald* "that the concurrent commands from respective queues can be in an arbitrary order of arrival" while at the same time admitting that the combination of *Blumenau*,

*Ofer*, and *Fitzgerald* is “silent about the order in which the commands are selected from respective queues...” (Paper No./Mail Date 20090904, page 5). Applicants respectfully remind the Patent Office that the standard for rendering a claim obvious is what the references actually teach or suggest, not what can be inferred from the references. As such, Applicants submit that the Patent Office has failed to establish a *prima facie* case of obviousness because the Patent Office has admitted that the combination of *Blumenau*, *Ofer*, and *Fitzgerald* is silent regarding the order in which the commands are selected from the queues as defined in claim 10. Furthermore, the Patent Office alleges that the references can be inferred to teach or suggest the elements recited in claim 10; however, Applicants submit that just because references can be inferred to operate in a particular manner does not necessarily mean that the references actually operate in such a manner without a teaching or suggestion, which is why obviousness requires a specific teaching or suggestion. Moreover, Applicants submit that the Patent Office’s claim that there is no particular order or that the order is not important in the system of *Ofer* and *Fitzgerald* is purely supposition/speculation on the Patent Office’s part, and the lack of disclosure (i.e., silence) in the references cannot be inferred to include a particular meaning, and certainly cannot be inferred as teaching or suggesting the elements specifically recited in claim 10. As such, Applicants submit that because the Patent Office is construing the silence in *Blumenau*, *Ofer*, and *Fitzgerald* as teaching or suggesting the elements of: “wherein concurrent commands from different ports arrive at the specific LU in an arbitrary order of arrival,” the Patent Office is using in impermissible hindsight to reject claim 10, which is expressly forbidden in the MPEP. Therefore, the combination of *Blumenau*, *Ofer*, and *Fitzgerald* fails to teach or suggest each and every element of claim 10.

The failure of the combination of *Blumenau*, *Ofer*, and *Fitzgerald* to teach or suggest each and every element of claim 10 is fatal to the obviousness rejection. Therefore, claim 10 is

not obvious over *Blumenau* in view of *Ofer* and *Fitzgerald*. Accordingly, Applicants respectfully request withdrawal of the rejection of independent claim 10.

Claims 11-18, 22, 24, 26, 28, and 30 depend from claim 10 and include all of the elements thereof. Therefore, Applicants submit that claims 11-18, 22, 24, 26, 28, and 30 are not obvious over *Blumenau* in view of *Ofer* and *Fitzgerald* at least for the same reasons as claim 10, in addition to their own respective features. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 11-18, 22, 24, 26, 28, and 30.

Regarding the rejection of claims 31-33, Applicants submit that claims 31-33 recite elements similar to claim 10 discussed above. Therefore, Applicants submit that claims 31-33 are not obvious over *Blumenau* in view of *Ofer* and *Fitzgerald* at least for the same reasons as claim 10, in addition to their own respective features. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 31-33.

**B. Claims 34-36**

Claims 34-36 stand rejected under 35 U.S.C. § 103(a) as being obvious over *Blumenau* in view of *Ofer*, *Fitzgerald*, and U.S. Patent Application Publication No. 2004/0205297 filed by Bearden (“*Bearden*”). Applicants respectfully traverse the rejection.

Claims 34-36 each recite the elements of: “wherein concurrent commands from different ports arrive at the specific LU in an arbitrary order of arrival,” similar to claim 10 discussed above. Applicants have discussed above the failure of the combination of *Blumenau*, *Ofer*, and *Fitzgerald* to teach or suggest the elements of: “wherein concurrent commands from different ports arrive at the specific LU in an arbitrary order of arrival,” recited in claim 10 and submit that such discussion is equally applicable to similar elements recited in claims 34-36. Therefore, the combination of *Blumenau*, *Ofer*, and *Fitzgerald* fails to teach or suggest each and

every element of claims 34-36. The Patent Office relies on the disclosure in *Bearden* to cure the defects of *Blumenau*, *Ofer*, and *Fitzgerald*; however, Applicants submit that *Bearden* fails to cure such defects.

In making the rejection, the Patent Office does not cite *Bearden* as teaching or suggesting the elements of: “wherein concurrent commands from different ports arrive at the specific LU in an arbitrary order of arrival,” recited in claims 34-36. Moreover, in reviewing *Bearden* Applicants are unable to discern any sections of *Bearden* teaching or suggesting such elements. Therefore, *Bearden* fails to cure the defects of *Blumenau*, *Ofer*, and *Fitzgerald*.

The failure of the combination of *Blumenau*, *Ofer*, *Fitzgerald*, and *Bearden* to teach or suggest each and every element of claims 34-36 is fatal to the obviousness rejection. Therefore, claims 34-36 not obvious over *Blumenau* in view of *Ofer*, *Fitzgerald*, and *Bearden*. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 34-36.

## **II. Amendments to the Specification**

Applicants have amended the specification to correct inadvertent errors. Applicants submit that no new matter is added by these amendments.

**CONCLUSION**

In view of Applicants' amendments and remarks, it is respectfully submitted that the Patent Office's rejections have been overcome. Accordingly, Applicants respectfully submit that the Application, as amended, is now in condition for allowance, and such allowance is therefore earnestly requested. Should the Patent Office have any questions or wish to further discuss this Application, Applicants request that the Patent Office contact Applicants' attorney at the below-listed telephone number.

If for some reason Applicants have not requested a sufficient extension and/or have not paid a sufficient fee for this Response and/or for the extension necessary to prevent abandonment on this Application, please consider this as a request for an extension for the required time period and/or authorization to charge Deposit Account No. 090449 for any fee which may be due.

Respectfully submitted,

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